

Approved 10/7/09

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
July 1, 2009**

Board Present: Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO Scott Bickford

Absent: None

1.Call to Order: Chairman Remian called the meeting to order at 6:30 P.M. and a roll call was taken.

2. Correspondence: The chairman mentioned a piece of correspondence from the DEP saying Cushing's Shoreline Zoning ordinance was accepted and approved by the department. Three minor corrections had been requested and the chairman said they would be made.

Old Business:

3. Machias Savings Bank, represented by Paul Rudd: *[Please note that the secretary was not always able to tell from the digital recording which Machias Savings Bank representative was speaking.]*

Mr. Remian said Carlton Johnson and Paul Rudd were here to update the PB on some issues. Mr. Rudd thanked the PB for its time and introduced Andrew Hedrich, engineer with Gartley & Dorsky.

Mr. Rudd had six items to discuss: access to Lot 26 at the end of Meduncook Plantation; plans for Hornbarn Hill Subdivision; the storm water drainage report completed by Mr. Hedrich after a meeting with CEO Bickford; the status of the roads and common areas; topo work completed on some lots in Meduncook and Hornbarn; and a brief update on Robbins Mountain.

Mr. Rudd said the CEO had some questions regarding storm water drainage. The first was whether the cross-drains had been placed as shown on the original plan; he stated that those drains had been removed from the final plan. Mr. Rudd said he, Mr. Johnson and representatives of the HOA had met with Mr. Bickford at the site. This meeting resulted in the decision to hire an engineer to look at all the roads in the subdivisions, with particular attention to the adequacy of the storm water drainage. Mr. Rudd said he would provide copies of the engineer's report to the Board and said it stated that the majority of the issues discovered were maintenance issues resulting from some homes under construction blocking some of the drainage; some culverts also needed to be installed. Mr. Johnson was unsure whether these changes had already been made. In addition, there were issues on the Pleasant Point Rd. where Mr. Tower had made an arrangement with MDOT to ditch a stretch of that road. He reported that Mr. Hedrich had not been "particularly pleased" with the ditching there, but Mr. Johnson said he thought it had been completed to the satisfaction of MDOT. Mr. Hedrich said he would be available to answer any questions from the Board regarding his report, both now and at any later time.

Mr. Remian said the town had an approved subdivision and a registered plan. He said there had been many plans along the way, but the bank should use the approved plan as the basis for any work. He said they could apply to amend the plan if they wished. Mr. Rudd said that was not their wish; they had wanted to know if the drainage was adequate in relation to the design of the roads. Mr. Rudd said he thought no action was required, but invited the Board to decide that issue after studying the report.

Mr. Ellis asked the CEO if any parts of the subdivisions that were done under whatever version of the regulations required the roads to be inspected when the work was complete; furthermore, were his approvals of those roads done? Mr. Bickford said some of the road approvals did take place under the original subdivision regulations, which had since changed. Mr. Ellis asked if the road in Lot 26 needed to be inspected and approved. Mr. Bickford said the last inspection of that road was at the base of the hill before Lot 26 was reached. Mr. Ellis confirmed that the approach to Lot 26 was a driveway approved to be built to road specifications. Mr. Bickford confirmed that the access to Lot 26 had never been inspected or approved. Mr. Ellis asked if the regulations under which Lot 26 was approved required the access to be inspected. The CEO said he would have to see if that had been a stipulated in

the approval. Mr. Ellis asserted that there had been a condition that the driveway be inspected to make sure it was built to road specs.

Mr. Cobey said it was his understanding that the Board would be listening tonight, rather than making suggestions as to what should be done. Mr. Remian confirmed this.

Mr. Rudd stated that the bank was still evaluating its plans for Robbins Mountain, which had an MDOT entrance permit off Pleasant Point Rd. He said any subdivision there would not be to the degree the previous owner had planned. He said topo work had been done on Lots 9 & 10 in Meduncook and four lots in Hornbarn Hill. Mr. Rudd understood that some of the Shoreland Zoning had since been changed to Resource Protection [RP], based on slopes. He said he had maps of the topo work, which he would provide to the Board if they wanted them. Mr. Rudd said the work had been done for the benefit of the bank and prospective buyers of the lots. Mr. Remian said the Board would be interested in seeing the maps and Mr. Rudd provided them to the chairman. Mr. Rudd said further topo work would be completed.

Mr. Rudd displayed the plan for Hornbarn Hill, saying the bank planned to add four lots to the original plan for this subdivision. He asked if the Board had any preliminary concerns before the formal application was made. Mr. Remian responded that he knew of none, though the lot count might be restricted by the covenants in place. Mr. Rudd said the lot count would not exceed the 64-lot total. Mrs. Kalloch said the Board had denied the four-lot addition requested by Mr. Tower. Mr. Rudd reported that the roads and common areas had not yet been deeded to the HOA, though that would probably be done this summer.

Mr. Rudd said he had asked Mr. Hedrich to investigate the possibilities for access to Lot 26. He wished to leave that report with the Board tonight and expressed his personal opinion that access should remain as it was today. He said the bank would be combining the piece that abutted Peter Cardon's property with Lot 26, rather than making it a separate lot. Mr. Rudd asked if the Board wanted a formal proposal on this or wished to discuss it.

Mr. Bickford asked if that access to RP could meet the requirements for slopes and runoffs, as approved by the PB, as Mr. Tower had said it would. Mr. Hedrich said the access (or its history?) was convoluted and he had looked at the current plan that stated the driveway had to meet road standards, with the exception of grade and width. He said a driveway had no materials or storm water standards, which allowed for great flexibility. He recommended that storm water measures be placed along the road.

Mr. Muddle recalled that a 16' driveway width had been specified and Mr. Colby recalled a 10% grade specification. Mr. Hedrich said the latest plan he had, which was perhaps not the final one, did not specify grade and width requirements. Mr. Bickford suggested he get together with the engineer to review the minutes on that issue. Mr. Ellis said the minutes would include the exact conditions and whether or not the plan with the registered map was the one the Board approved. Mr. Rudd said the bank had inherited any problems and asked that, for the sake of the environment, the driveway not be moved. Mr. Cobey noted that DEP also had an interest in the side slopes down to the water. Mr. Remian and Mr. Ellis said the Board was governed by the standards, which the bank should follow. Mr. Hedrich said there were no standards for a driveway and Mr. Ellis said this particular driveway was to be built to road standards, with the exception of the grade and width, which were specified in the approval. CEO Bickford said this was done to mitigate the impact on RP.

New Business:

4. State Planning Office – Flood Plain Area: The chairman said the State Planning Office [SPO] representatives were present to discuss Cushing's Flood Plain Ordinance [FPO] and the measures needed to reinstate it. He gave a brief history of the town's FPO. Mr. Remian said the current issue was getting the town's reports in line with State Planning Office requirements. Sue Baker and Brigit _____ represented the SPO. Ms. Baker said they had come earlier today because FEMA required, for reinstatement into the national flood insurance program, a community visit to determine what development had been allowed in the intervening years. She stated that, as small towns went, what they had found was good. Shoreland Zoning had kept development out of the flood plain and RP had prevented new buildings from being built. Ms. Baker said she was pleased.

Ms. Baker said a few things would need to be exchanged between her office and the town before the paperwork could be completed. She said the town would have to update its application and then her office would make a recommendation to FEMA. Ms. Baker said inclusion in the program would mean that anyone in Cushing who felt he/she had flood risk could purchase a flood insurance policy. The town would also be eligible for disaster assistance for flood damage, as well as the opportunity to apply for MEMA mitigation grants.

Ms. Baker had provided informational packets, which she encouraged Board members to read. The PB would be the permitting authority under its FPO and must have a process in place to deal with any development within the flood plain. CEO Bickford asked about pipes, located in the flood plain, for storm water discharge. Ms. Baker said these would be considered development and digging them up would require DEP approval and a minor permit. Ms. Baker said development encompassed "any manmade change in the flood hazard area." Ms. Baker said she was very impressed with the way Cushing had handled shoreland zoning and development during the years in which it had not been under FPO.

Ms. Baker acknowledged that FEMA's digital re-mapping program was moving slowly, but said the community would eventually receive new maps that would depict buildings and which could be used in the GIS system. Brigit _____ said once these maps were received the SPO would return and ask the town to adopt a modified matching ordinance. She estimated that residents would be able to purchase flood insurance by the end of September.

Mr. Ellis asked who would be the local reviewing authority. Ms. Baker said the town's adopted ordinance said applications would be submitted to the CEO, who would do reviewing and permitting. Mr. Cobey asked if the new maps would be more definitive than Zone A and Ms. Baker replied that they would still have Zone A areas, which should not be a problem for Cushing since all of its flood plain areas were in RP. Brigit _____ said the town could submit topographic data, to aid in making the new maps, at a future scoping meeting.

Mr. Bickford asked how often the FPO would need to be updated. Ms. Baker said it should not be often, but most likely when the new FEMA maps were available.

Mr. Remian asked Ms. Baker to list everything the town would need to provide to the SPO in order to get the FPO process underway. Ms. Baker said she would need an accounting for the development that had been allowed while the community was out of the FPO program; a letter explaining to FEMA that the town had had its flood plains in RP the entire time it was out of the program and that no new buildings had been allowed; and, on the application, how many acres of the town were in the flood plain area, population, number of 1-4 family structures and all other structures in the flood plain.

Alton Grover asked at what elevation a person would be told he/she did not need flood insurance. Ms. Baker said anyone anywhere in the town could buy flood insurance; however, anyone buying a house in the Special Flood Hazard Areas would be required to buy the insurance. There was a lengthy discussion about various scenarios.

Other: Mr. Ellis said there had been recent emails from David _____ about subdivision protection with corporations etc. and he felt the PB should have a workshop to start on the issue. He was under the impression that the Board would get selectmen approval to hire its own lawyer to help with the first draft. Mr. Cobey said he felt that would be too expensive and discriminatory, because it applied only to corporations and not individuals. He felt the Board should start on it without legal advice and described an appeals process and money in escrow for the town's legal costs. Mr. Muddle said he thought this bordered on extra-legal action and the court would throw it out. He said it was wrong to force someone who appealed a decision to escrow funds; no funds should be collected until the appeals process was completed. Mr. Cobey disagreed. There was further discussion. Mr. Cobey said there were several other things that needed to be discussed to bring the subdivision ordinance up to date.

Mr. Cobey said that Lot 26 would eventually require a determination of slope and said the PB could require that before allowing a house to be built. He said the CEO would issue the permit, but he thought the CEO did not have the power to require that information. He suggested that the regulation language be changed to say the CEO could require the necessary information. Mrs. Kalloch and Mr. Bickford said a permit in RP came through the PB, not the CEO. Mr. Cobey then said the house might not be in RP. The CEO said he could not issue a permit without legal access, which Lot 26 would not have if the driveway did not meet the conditions placed upon it. Mr. Cobey wondered if there were other situations where the CEO would need to have the power to require more information. Mr. Muddle said subdivision approval required that improvements be completed, inspected and certified before any lots could be sold. Mr. Bickford said this was true of the fire pond and road, but the driveway to Lot 26 was a different matter. There was a lengthy conversation about possible problems resulting from non-compliance to the plan.

The Board scheduled a workshop on July 14 at 7:00 A.M.

5. Adjournment:

ACTION: Mr. Ellis made a motion to adjourn at 8:22 P.M.
Carried 5-0-0

.
Respectfully submitted,

Deborah E. Sealey
Recording Secretary
(Transcribed from the digital recording)